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## Appeal Decision

Site visit made on 18 November 2019

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 June 2021**

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**Appeal Ref: APP/Y9507/X/18/3217799**

**The Bungalow, Avington Trout Fisheries, Avington, Winchester SO21 1BZ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr and Mrs R C West against the decision of South Downs National Park Authority.
  - The application Ref 18/02844/LDE, dated 24 May 2018, was refused by notice dated 3 September 2018 .
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is the material change of use of a building previously used as a single dwelling to use as two separate single dwellinghouses by way of subdivision as per Section 55(3)(a), specifically not subject to any occupancy conditions.
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### Decision

1. The appeal is dismissed.

### Reasons

2. The appellants purchased the trout farm in 1999 and identify that at that time the bungalow was initially converted, without planning permission, into 3 separate independent units. There is some evidence for this, including payment of Council Tax on the units. The Authority appears to accept that was the situation, with its case based on the change not being from a single dwellinghouse and therefore not coming within the ambit of The Town and Country Planning Act Section 55(3)(a), which relates to conversion of single dwellinghouses to two or more separate dwellinghouses. Section 55(3)(a) notes 'the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used'.
3. The three separate units were then converted to two separate units in 2008. Therefore, on this evidence, the initial conversion of the single dwellinghouse to three separate units would appear, by definition of Section 55(3)(a), to have been a material change of use in 1999. The further change occurring in 2008 was more than four years later, so the initial conversion would have become lawful by passage of time. At the site visit the appellant identified the layout of the building when in three units. This demonstrated that the current conversion involves changes to all three units, so the change of use that has occurred involved all three units.

4. Section 55(3)(a) is of little relevance to the current situation. Section 55(3)(a) was relevant in 1999 when the conversion of a single dwelling to three dwellings was a material change of use.
5. The appellant argues that the use can be considered as a change from a single dwellinghouse to two units on the basis of Section 55(3)(a) in that it refers to the dwellinghouses' use 'previously' and not the 'last' use. I disagree with this interpretation; it is clear to me that 'the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse' means the change from the single dwellinghouse to one or more dwellinghouses. It would simply make no sense if a house were, say, converted to an office, then maybe an A1 use and then to two dwellings, that Section 55(3)(a) would still be relevant.
6. The application description on the appellants' own case of the history of the building is incorrect and needs to be amended to reflect the change that has actually occurred.
7. Therefore, what has to be considered is whether a material change of use has occurred by reducing the units from 3 units to 2 units. This is not an automatic material change of use, as there is no description of such in planning law, in the way section 55(3)(a) does for the reverse. Therefore, the change has to be considered on its merits and take into consideration such matters as planning impact, housing need, etc.
8. In cases related to the lawfulness of existing uses the description may be amended, but that is not automatically the case. In this instance much of the argument put forward by the appellants and Authority relates to the change from a single unit to two units, and not effectively the reverse from 3 to 2 units, and therefore they have not had the opportunity to address the materiality of the change that has actually occurred and in the interest of natural justice the parties need to be able to address the relevant issues.
9. The appellant has currently not made out the case on the balance of probability that the change that has occurred is a material change of use which has become lawful, so it would not be appropriate in this situation to change the description.
10. For the reasons given above I conclude that the Authority's refusal to grant a certificate of lawful use or development in respect of *the material change of use of a building previously used as a single dwelling to use as two separate single dwellinghouses by way of subdivision as per Section 55(3)(a), specifically not subject to any occupancy conditions* was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
11. The use of a building is controlled by its planning permission, and any conditions attached to it, and the degree of difficulty a use may have in being implemented is not relevant. The current use of the dwelling would appear not to be controlled by any planning permission as it may only be authorised by the passage of time.
12. However, if the original permission were found to apply and any residential use was controlled by the planning conditions, this does not confine its use to a water keeper working at the trout fishery. It also allowed for an agricultural or

forestry worker, not someone specifically working at the trout farm. It may have been the intention to limit the use, but it was not precise to that purpose. It is clear from the reason given for imposing the condition that it was to meet the essential needs of the area, not the needs of the business. Nor was the use as a single dwellinghouse tied to the fishery by a legal agreement. Therefore, if the condition applies, the building would be a normal agriculturally tied dwellinghouse.

*Graham Dudley*

Planning Inspector